

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6328

BILL NUMBER: HB 1022

NOTE PREPARED: Apr 8, 2011

BILL AMENDED: Apr 7, 2011

SUBJECT: Officeholder Qualifications, Nepotism, and Public Contracts.

FIRST AUTHOR: Rep. Saunders

FIRST SPONSOR: Sen. C. Lawson

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill does the following.

Not Lucrative Offices- The bill provides that the following are not lucrative offices: (1) Notary public. (2) Membership on a board administered by the Professional Licensing Agency.

Unit Employees Elected to Office- The bill provides that an employee of a county, city, town, or township (unit) is considered to have resigned from employment with the unit if the employee assumes the elected executive office of the unit or becomes an elected member of the unit's legislative or fiscal body.

Exceptions- The bill provides that an employee of a unit who: (1) on December 31, 2011, holds an elected office of the unit that employs the individual; or (2) on January 1, 2012, assumes an elected office of the unit that employs the individual; may serve the remainder of the employee's elected term of office without resigning as a government employee. The bill provides that the restriction does not prohibit an employee of a unit from holding an elected office of a unit other than the unit that employs the government employee.

Nepotism Prohibited- Subject to certain exceptions, the bill prohibits a relative of an executive, a member of the legislative body, or a member of the fiscal body (elected official) of a county, city, town, or township from being employed by the unit and prohibits relatives who are unit employees or elected officers of the unit from being placed in a direct supervisory-subordinate relationship.

Nepotism and Position Contracts- The bill provides that provisions concerning nepotism apply to a person who contracts with a unit to fill a vacancy in a position with the unit that was formerly held by an employee.

Nepotism Exemptions- The bill provides that the performance of duties of a precinct election officer or a volunteer firefighter is not considered employment by the unit for purpose of the nepotism law.

The bill provides that an individual who is: (1) a relative of an elected officer of the unit (excluding a member of the executive, legislative, or fiscal body); or (2) a relative of an employee of the unit; may not be employed in a position in which the individual is in the line of supervision of the elected officer or employee. The bill specifies that an employee includes an appointed officer of the unit.

The bill allows a person who has been employed in the same position with the unit for at least 12 consecutive months on June 30, 2011, or for at least 12 consecutive months immediately preceding the date the relative assumes office, to remain employed by the unit and be within the relative's line of supervision unless the person: (1) is a merit police officer; and (2) is promoted after June 30, 2011, to a higher rank other than a merit rank.

Public Safety Officer Exemptions- The bill allows a person to remain employed by the unit and be in the relative's line of supervision, if the person is: (1) a police officer employed by a police department on June 30, 2011, and serving a probationary period with the intent of becoming a merit employee of the police department; or (2) a firefighter employed by a fire department on June 30, 2011, and serving a probationary period with the intent of becoming a merit employee of the fire department; unless the police officer or firefighter is promoted after June 30, 2011, to a higher rank other than a merit rank.

Other Exemptions- The bill makes the following additional exceptions: (1) Allows a township trustee whose office is located in the trustee's personal residence to employ not more than one relative to work in the township trustee's office and be in the trustee's line of supervision. (2) Allows a coroner who is ineligible for another term of office due to term limits, to be hired by the coroner's successor, even though the successor is a relative and will result in the coroner working in the successor's line of supervision. (3) Allows a sheriff to hire the sheriff's spouse as prison matron for the county and work in the sheriff's line of supervision.

Monetary Exemption Threshold- The bill limits the total compensation of the township trustee's employed relative to \$5,000 per year.

Nepotism and Contracts- The bill requires a unit to implement a policy that complies with the nepotism law and contracting law.

Annual Certification of Compliance- The bill requires each elected official of the unit to annually certify in writing, subject to the penalties for perjury, that the official is in compliance with the nepotism and contracting law and submit the certification to the executive of the local unit. The bill requires the executive of the local unit to file with the annual personnel report filed with the State Board of Accounts (SBOA) a statement: (1) certified under the penalties for perjury; and (2) regarding whether the unit has implemented a policy that complies with the nepotism law and contracting law.

Contracts- The bill provides that a unit can enter into or renew: (1) a contract for the procurement of goods and services; or (2) a contract for public works; with a relative of an elected official or a business entity in which a relative has an ownership interest if: (1) the elected official does not violate the criminal conflict of interest statute; and (2) the elected official makes full written disclosure and satisfies any other requirements of the public purchasing law or the public works law.

Suspension of Office- The bill provides that a local elected officeholder may be suspended from office if the

officeholder is charged with certain felonies or misdemeanors and a two-thirds majority of the legislative body finds that the offense with which the local elected official is charged is relevant to the official's suitability for office and it is in the best interests of the unit that the official be suspended from office. The bill specifies that a member of the legislative body who is charged with an offense is not eligible to vote on the member's suitability for office, and provides that certain relatives of the member are likewise ineligible to vote. The bill specifies that the local elected official will be reinstated with back pay if the official is acquitted or charges are dropped.

Effective Date: July 1, 2011.

Explanation of State Expenditures: *Annual Certification of Compliance-* The bill specifies that local unit executives must provide a report to the State Board of Accounts (SBOA), under the penalty of perjury if falsified, that the local unit is in compliance with the nepotism and contractual requirements of the bill. Local unit executives would be subject to perjury, a Class D felony, for falsely certifying that the unit is in compliance with nepotism provisions established under the bill.

Penalty Provision: A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Penalty Provision:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000. However, any additional revenues would likely be small.

Explanation of Local Expenditures: *Unit Employees Elected to Office/Exceptions-* A police or firefighter that is elected to an office in a local unit would continue to be credited with time spent in full-time employment for all purposes, including retirement and pension benefits while in office. The impact of this provision on the 1977 Police Officers' and Firefighters' Pension and Disability Fund is unknown and would depend on the number of firefighters and police officers that are elected to local office in the future.

Annual Certification of Compliance- The bill specifies that local units that do not file a statement with the SBOA that they are in compliance with the above requirements would not have their budgets nor any additional appropriations approved by the Department of Local Government Finance in the following year until notified by the SBOA that the subdivision is in compliance. Any impact on local unit expenditures would depend on the amount of time a local unit was not in compliance.

Monetary Exemption Threshold- This provision could have a minor effect on expenditures for salaries of trustees' employed relatives.

Penalty Provision: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Contracts, Nepotism and Contracts, Position Contracts- These provisions would have an indeterminable effect on local unit contract expenditures between an elected official and a relative or a business owned by

the relative; and the number of persons that would be in a position to contract for a vacated unit employee position.

(Revised) *Suspension of Office*- A local officeholder suspended from office under the bill's provisions would have the option of appealing through judicial review. If more judicial reviews are conducted, courts would see a greater caseload. However, it is likely any increase in caseloads of circuit or superior courts would be small.

A suspended officeholder would still be eligible to receive health benefits (if applicable). Therefore, this provision could increase local expenditures if a local unit appointed an acting replacement for the suspended officeholder and were paying two persons health benefits for one elected office. Additionally, elected officeholders reinstated from suspension could be eligible for back pay depending on the circumstance and judgement in a criminal proceeding.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Department of Correction; State Board of Accounts; Department of Local Government Finance.

Local Agencies Affected: All; Trial courts, local law enforcement agencies, county prosecutors; cities, towns, townships, and counties.

Information Sources:

Fiscal Analyst: Chris Baker, 317-232-9851.